

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4
5
6 ZINUS, INC.,
a California corporation,

7 Plaintiff,

8 vs.

Case No. 07-CV-03012 PVT

9 SIMMONS BEDDING COMPANY,
a Delaware corporation,
10 and DREAMWELL, LTD., a
limited liability company
11 of Nevada,

12 Defendants,

13 AND RELATED COUNTERCLAIMS.
14

15 DEPOSITION OF SCOTT REEVES

16 VOLUME II

17 (CONFIDENTIAL TREATMENT AS REQUESTED BY COUNSEL)

18 MONDAY, FEBRUARY 11, 2008

19 PAGES 66 to 165
20
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22 REPORTED BY: LOUISE MARIE SOUSOURES, CSR NO. 3575

23 Certified LiveNote Reporter
24
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1 A P P E A R A N C E S

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4 FOR PLAINTIFF:

5 IMPERIUM PATENT WORKS

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15 FOR DEFENDANTS:

16 PERKINS COIE LLP

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1 BE IT REMEMBERED that pursuant to Notice, and
2 on Monday, February 11, 2008, commencing at the hour of
3 9:50 a.m. thereof, at Four Embarcadero Center, San

4 Francisco, California, before me, LOUISE MARIE
5 SOUSOURES, a Certified Shorthand Reporter, there
6 personally appeared:

7 SCOTT REEVES,
8 called as a witness by the Defendants, and who, being
9 first duly sworn, was thereupon examined and testified
10 as hereinafter set forth:

11 EXAMINATION BY MR. WILSON (CONTINUED):

12 Q. Good morning, Mr. Reeves.

13 A. Good morning.

14 Q. Are you still the president of Zinus
15 Incorporated?

16 A. Correct.

17 Q. Do you have any other titles with Zinus
18 Incorporated?

19 A. No.

20 Q. Okay. Do you recall being deposed a couple
21 months ago in this case?

22 A. Yes.

23 Q. Do you remember I gave you some instructions
24 about, you know, what a deposition is about, guidelines
25 for the deposition? Do you recall that I did that at

9

11 Q. Has Zinus sold inner spring Mattress-in-a-Box
12 product to walmart.com?

13 A. Yes.

14 Q. Has Zinus sold inner spring Mattress-in-a-Box
15 product to Wal-Mart Canada?

16 A. Yes.

17 Q. Has Zinus sold inner spring Mattress-in-a-Box
18 product to any entity that is not affiliated with
19 Wal-Mart?

8

2 Q. Has Zinus ever shipped or delivered a
3 demonstration product to any entity other than Wal-Mart
4 or Wal-Mart affiliates?

5 A. Can you help me better understand that?

6 Q. Sure. Have you ever shipped a box of inner
7 spring Mattress-in-a-Box product to anybody to evaluate?

8 A. Probably so.

9 Q. Do you have any doubt as to whether Zinus has
10 done that?

11 A. No, we shipped our sample to other customers
12 before other than Wal-Mart and they were in a box.

5 When you make presentations to customers, does
6 Zinus bring a boxed product?

7 A. Initially, but then we set -- if the meeting is
8 at our facilities, then everything is already set up.

9 If we fly to our destination, we will unpack
10 the mattress so that the buyer sees it unpacked and
11 boxed separate.

12 Q. Can you identify customers for which Zinus has
13 taken a box and unpacked it for a customer presentation?

14 A. Oh, Wal-Mart.

15 Q. When you say Wal-Mart, are you referring to
16 Wal-Mart Incorporated?

17 A. Yes.

8

11 Q. Does Zinus have a -- has Zinus ever had any
12 contractual relationships with Wal-Mart?

13 A. No, everything's been arm's length kind of
14 relationship with them.

15 Q. Has Zinus ever entered into a written sales
16 plan with Wal-Mart?

17 A. No.

18 Q. Has Zinus ever entered into a written supply
19 agreement with Wal-Mart?

20 A. There's a supply agreement that all vendors
21 have with Wal-Mart, so we have. In fact, it's called a
22 vendor agreement.

23 Q. Zinus has signed a written supply agreement
24 with Wal-Mart, correct?

25 A. Yes.

9

17 Q. Has Zinus ever done presentations for wal-Mart
18 where it has taken the compressed mattress out of what
19 you referred to as the duffel bag in your previous
20 deposition?

21 A. Yes.

22 Q. How many times has Zinus done presentations
23 like that for wal-Mart?

24 A. I'm not sure how many. A few times. I did one
25 myself to senior management of wal-Mart where I took the

1 mattress out of the box and cut it open across the
2 mattress sides and then it popped open and I had her lay
3 on it right away.

4 Q. When you say you cut it open, you mean you cut
5 the plastic wrapper that the mattress was compressed in?

6 A. Yeah.

7 MR. WALLACE: Objection, vague, calls for a
8 legal conclusion.

9 BY MR. WILSON:

10 Q. Let me make sure I understand what happened.

11 In the presentation that you were just
12 discussing that you personally did for Wal-Mart, you
13 removed the mattress packed in the duffel bag out of the
14 box, correct?

15 A. Correct.

16 Q. You then took the mattress out of the duffel
17 bag, correct?

18 A. Correct.

19 Q. You then cut the plastic wrapper surrounding
20 the mattress so that it could decompress, correct?

21 A. Yeah, the way we do it is we have to -- we slit
22 the wrapper all the way across so that it can pop open
23 immediately so it's a very rapid, you know, it's eye
24 popping, it pops up right away and you can lay on it
25 right away.

♀

1 So that's what we're trying to convey in a
2 presentation like that.

3 Q. During this presentation, you allowed the
4 mattress to return to its uncompressed state, correct?

5 A. Yes, which it does immediately.

6 Q. When you say immediately, in that particular
7 presentation, how long did it take?

8 A. Less than a minute. It's just instantaneous.

8

6

18 Q. Does Zinus expect people who receive or view
19 the promotional materials that Zinus creates to believe
20 the statements in those materials are truthful?

21 A. Sure.

22 Q. Does Zinus intend the information that it puts
23 in its promotional materials to be truthful?

24 A. Sure.

25 Q. Are you aware of any instance when Zinus has

9

1 circulated advertising or promotional materials that
2 contain statements that were not truthful?

3 A. Not to my knowledge.

4 Q. Has Zinus designed packaging for its
5 Mattress-in-a-Box product?

6 A. Yes.

8

13 Q. Do you care whether retail customers believe
14 the wording on the box?

15 A. We care.

16 Q. Does Zinus endeavor to be truthful in the
17 statements that it places on the box for its product?

18 A. Yes, we endeavor to be truthful.

19 Q. Are you aware of any instance in which Zinus
20 has not been truthful in the statements that it has
21 placed on the box for the inner spring Mattress-in-a-Box
22 product?

23 A. I'm not sure I'm aware of any time that that
24 has happened.

8

22 Q. In the product that you shipped to Wal-Mart
23 Stores Incorporated, has Zinus included instructions
24 inside the box?

25 A. I believe we did. I believe we did.

8
7

1 Q. In the inner spring Mattress-in-a-Box product
2 that Zinus has supplied to walmart.com, has Zinus
3 included product instructions in the boxes?

4 A. I'm not sure, but I believe so, but I'm not
5 sure on that.

6 Q. And who would know the answer to that?

7 A. Our people would. Our people in our Pleasanton
8 office.

9 Q. Anybody in particular?

10 A. Bruce or our Bentonville office personnel who
11 handle Wal-Mart would know.

12 Q. In the product that you provided to Wal-Mart
13 Canada, have there been instructions placed inside the
14 boxes?

15 A. I don't know.

16 Q. Have there been instructions placed inside the
17 boxes for inner spring Mattress-in-a-Box product that
18 Zinus has supplied to customers other -- actual
19 prospective customers other than Wal-Mart?

20 A. I don't believe so, but I'm not sure. I do not
21 believe so, though.

7

1 Q. You referred earlier to a presentation that you
2 personally made to wal-Mart stores where you took a
3 mattress out of the box, opened the packaging and
4 allowed it to be decompressed.

5 Do you recall that testimony?

6 A. Yes.

7 Q. Are you aware of any presentations made by
8 others at Zinus to wal-Mart where they have taken a
9 mattress out of the box -- taken it out of the packaging
10 and allowed it to uncompress?

11 A. There may have been a few other instances and
12 because the process is very quick, and so from the time
13 we take it out of the box to the time it's set up, it
14 just pops right up.

15 So there may have been a few, but if it was,
16 it's probably a handful of times.

17 Q. What was your purpose in giving wal-Mart the
18 presentation that you gave them when you took the
19 mattress out of the box and opened it?

20 A. The purpose of my presentation was to show the
21 senior management what it would look like in-store in
22 its box, how it's pulled out of the box and how it
23 instantaneously opens up.

24 So you can -- she literally laid on it within a
25 very quick period of time, from just opening it up and

1 just so she could feel how comfortable it was.

2 Q. You wanted your customer wal-Mart to understand

3 the process of removing the box -- the mattress from its

4 packaging and allowing it to uncompress, correct?

5 A. Correct.

6 Q. Have --

7 A. I want to make sure that you understand that

8 this is a process that's quick. This is not --

9 Q. I think you said that a number of times.

10 A. Okay, good. I want to make sure it's something

11 that happens quick and that's the purpose of giving a

12 presentation like that.

14 Q. When you say the mattress expands immediately,
15 in less than a minute, does it take the mattress less
16 than a minute to fully expand to the volume that it was
17 at before it was compressed?

18 A. Close to it. Not exact.

19 Q. How long does it take for the mattress to fully
20 expand to its uncompressed state?

21 MR. WALLACE: Objection, vague.

22 THE WITNESS: That really -- that might vary on
23 the different styles that you manufacture.

24 The current styles that we're selling, it's,
25 gosh, within a couple minutes.

1 But again, you can -- as soon as you open it
2 up, you'll see it pop up and you can lay on it right
3 then.

4 BY MR. WILSON:

5 Q. Has anyone ever told you that -- strike that.

6 Has anyone ever told Zinus that it takes more
7 than an hour for the mattress to fully reexpand to its
8 uncompressed state?

9 A. Again, that may depend on the construction of
10 the product.

11 Q. I'm asking you regardless of the construction
12 of the product, has anybody ever advised Zinus that it
13 has taken more than an hour for an inner spring
14 Mattress-in-a-Box product to fully expand to its
15 uncompressed state?

16 MR. WALLACE: Objection, vague.

17 THE WITNESS: Of an inner spring mattress?

18 BY MR. WILSON:

19 Q. Yes.

20 A. An hour specifically?

21 Q. I said more than an hour.

22 A. Not on the products that we've shown to
23 Wal-Mart or walmart.com.

24 Q. How about --

25 A. But some cases, that may have occurred, but

- 1 that's if it has memory foam built on top of it, which
2 it tends to be a little slower in recovering air, but
3 the springs pop up right away.

9

17 Q. Are you aware of any instance in which somebody
18 has been injured by the expansion of an inner spring
19 Mattress-in-a-Box product?

20 A. No.

21 Q. Are you aware of any instance in which a person
22 has been frightened by the expansion of an inner spring
23 Mattress-in-a-Box product?

24 A. Not to my knowledge.

25 Q. Have there been any instances in which you've

1 heard that customers have complained that the expansion
2 was abrupt?

3 A. No, not to my knowledge.

4 Q. Does Zinus maintain a customer service number
5 for its customers' customers who purchase inner spring
6 Mattress-in-a-Box products?

7 A. Yes.

8 Q. Has Zinus ever received calls from those
9 customers?

10 A. Yes.

11 Q. Does Zinus maintain any record of those calls?

12 A. Yes.

13 Q. What type of record?

14 A. Who the customer is, what the issue is, and how
15 the situation needs to be resolved.

16 Q. Have any customers ever called with concerns
17 about the speed at which the Mattress-in-a-Box product
18 returns to its uncompressed state?

19 A. I don't know.

20 Q. Has Zinus ever received any calls from
21 customers who don't know how to take the
22 Mattress-in-a-Box product out of the box?

23 A. Perhaps, but I'm not sure.

24 Q. Has Zinus ever received any calls from
25 customers who don't know how to take the

7

1 Mattress-in-a-Box mattress out of the plastic wrapper
2 that surrounds it?

3 A. Perhaps, but I'm not sure.

4 Q. Has Zinus ever received any calls from
5 customers who were unable to remove the
6 Mattress-in-a-Box mattress from either the duffel bag or
7 the fabric roll?

8 A. I'm not sure.

9 Q. Would the records that you have of customer
10 calls contain this information?

11 A. They may or may not.

12 MR. WILSON: I'd like to have marked as
13 Exhibit 213 a document bearing -- actually, no Bates
14 number on it, it's identified as Exhibit E to your
15 declaration.

16 (Exhibit No. 213 was marked.)

17 BY MR. WILSON:

18 Q. Do you recognize this document?

19 A. I believe so.

20 Q. What is this document?

21 A. I think this is the setup instructions for
22 unpacking the mattress -- setting up the mattress.

23 Q. These are the instructions that Zinus includes
24 inside the box for its inner spring Mattress-in-a-Box
25 product, correct?

1 A. Correct.

2 Q. Does Zinus expect that customers who purchase
3 the Mattress-in-a-Box product for use will follow these
4 instructions?

5 A. Yes.

6 Q. Do you understand that customers who purchase
7 the product for their use will follow these
8 instructions?

9 A. Yes.

10 Q. Specifically, you understand that customers who
11 purchase an inner spring Mattress-in-a-Box product will
12 take the spring mattress from the box and lay it on the
13 floor, correct?

14 A. Uh-huh, yes.

15 Q. Zinus expects that customers will cut the outer
16 polyethylene bag along the sewing line with scissors; is
17 that right?

18 A. Correct.

19 Q. Zinus understands that's what customers will do
20 as well, correct?

21 A. Correct.

22 Q. In fact, it's true, isn't it, that in order to
23 use the Mattress-in-a-Box product for its intended
24 purpose, customers must remove the Mattress-in-a-Box
25 product from either the duffel bag or the fabric roll?

8

1 MR. WALLACE: Objection, vague.

2 THE WITNESS: I'm not sure what fabric roll is.

3 BY MR. WILSON:

4 Q. The fabric on the swirl wrapped product.

5 A. Oh, okay.

6 MR. WILSON: Could you reread the question,
7 please?

8 (The record was read by the Reporter.)

9 THE WITNESS: My confusion there was, I
10 believe, in my first deposition, you were referring to
11 it as film.

12 And I don't remember it being referred to as
13 fabric. I'm not sure I remember that.

14 That's where I've --

15 BY MR. WILSON:

16 Q. That's okay. I just need an answer to the
17 question.

18 Why don't we read the question back one more
19 time so you have it firmly in mind so I can get a clean
20 answer to the question.

21 (The record was read by the Reporter.)

22 THE WITNESS: Correct.

23 BY MR. WILSON:

24 Q. What is the intended purpose or use of the
25 Mattress-in-a-Box product?

8

1 A. The intended purpose is to sleep on it.

2 Q. Zinus intends that customers will cut open the

3 vacuum sealed bag surrounding the mattress, correct?

4 A. Correct.

5 Q. And Zinus understands that end user customers
6 for the Mattress-in-a-Box product do, in fact, puncture
7 or sever the vacuum seal bag, correct?

8 MR. WALLACE: Objection, compound.

9 THE WITNESS: The consumers understand that
10 they need to cut across the entire width or length of
11 that product for -- and then remove the mattress from
12 that wrapper so that they can sleep on it.

13 BY MR. WILSON:

14 Q. Zinus understands that customers, in fact, do
15 cut the vacuum sealed bag to be able to use the
16 mattress, correct?

17 A. Yes, they cut it all the way across, one way or
18 the other.

19 Q. They have to do that in order to be able to use
20 the mattress for its intended purpose, correct?

21 A. Correct.

22 Q. Once the vacuum sealed bag is cut, Zinus
23 intends the customer will then allow the compressed
24 mattress to fully expand to its original shape, correct?

25 MR. WALLACE: Objection, vague.

1 THE WITNESS: Yes.

2 BY MR. WILSON:

3 Q. Zinus understands that customers, in fact, do
4 allow the compressed mattress to uncompress to its
5 original state, correct?

6 A. Correct.

to

19 Q. Aside from the presentation that you made for
20 wal-Mart, where you took a mattress out of the box and
21 allowed it to uncompress, are you aware of any other
22 presentations that Zinus has made to anybody in which
23 they have taken a mattress out of the box and allowed it
24 to uncompress?

25 A. I believe there's been a handful of

1 presentations given that may have -- where we may
2 have -- but I don't know if it was memory foam or if it
3 was inner spring.

4 Q. Is it fair to say that you can't, sitting here
5 today, identify any presentations other than ones you
6 have already discussed for inner spring mattresses in
7 which the mattress was taken out of the box and pulled
8 out to uncompress?

9 A. I can't give you a definitive truthful answer
10 on that.

11 I can say that it's -- it's a few, maybe a
12 dozen, maybe less.

13 I'm not sure.

14 Q. And you can't identify who those presentations
15 might have been made to, correct?

16 A. Not specifically.

9 Q. would you say that the Zinus inner spring
10 Mattress-in-a-Box product expands in an uncontrolled
11 manner?

12 MR. WALLACE: Objection, vague.

13 THE WITNESS: No. No.

14 BY MR. WILSON:

15 Q. would you say that the inner spring
16 Mattress-in-a-Box product expands in a controlled
17 manner?

18 MR. WALLACE: Vague.

19 THE WITNESS: I would say that the mattress
20 rises quickly and very controlled.

21 BY MR. WILSON:

22 Q. Has Zinus performed any internal testing on its
23 Mattress-in-a-Box products -- strike that, let me ask a
24 better question.

25 Can you think of any instance in which Zinus

- to
- 1 has taken an inner spring Mattress-in-a-Box product out
 - 2 of the box and performed testing on it?
 - 3 A. Oh, yeah.

9

- 22 Q. You would not consider opening the Zinus
23 Mattress-in-a-Box inner spring product to be a dangerous
24 experience, correct?
25 A. Not at all.

1 Q. Aside from in the instructions that it has
2 provided in its inner spring Mattress-in-a-Box products,
3 has Zinus ever demonstrated or explained to anybody else
4 how to take the inner spring Mattress-in-a-Box product
5 out of the box and decompress it?

6 A. You mean in a presentation?

7 Q. In any form.

8 A. I think I just -- I think I just answered that
9 question, where we've taken it out of the box maybe a
10 dozen times, maybe less, but we've presented the product
11 in an uncompressed manner to where we -- from compressed
12 to uncompressed.

13 Q. Aside from those presentations that you
14 referenced earlier, have there been other instances in
15 which Zinus has explained to people how to remove the
16 inner spring Mattress-in-a-Box product from its
17 packaging and allow it to decompress?

18 A. Maybe. Verbally, maybe.

19 Q. In what instances?

20 A. Oh, I have no idea. Could be at a trade show,
21 could be in a ballroom. Could be you ought to see it,
22 it's really cool, but I'm not aware of.

8

25

Q. Is it fair to say that the inner spring

1 Mattress-in-a-Box product cannot be used for its
2 intended purpose unless it is removed from the duffel
3 bag or fabric or film roll?

4 MR. WALLACE: Vague, and calls for a legal
5 conclusion.

6 THE WITNESS: If your question is does it have
7 to be removed from the duffel bag or from the film wrap,
8 then I would say yes.

9 BY MR. WILSON:

10 Q. And the Mattress-in-a-Box needs to be removed
11 from the plastic wrapper to be used for its intended
12 purpose, correct?

13 A. Yes.

14 Q. Mattress-in-a-Box needs to expand to its
15 uncompressed state to be able to be used?

16 A. Correct.

17 Q. Would you agree that those are steps that any
18 consumer intending to use the Mattress-in-a-Box product
19 as a mattress would take, whether or not they had
20 instructions?

1 I, LOUISE MARIE SOUSOURES, duly authorized to
2 administer oaths pursuant to Section 2093(b) of the
3 California Code of Civil Procedure, do hereby certify:
4 That the witness in the foregoing deposition was by me
5 duly sworn to testify the truth in the within-entitled
6 cause; that said deposition was taken at the time and
7 place therein cited; that the testimony of the said
8 witness was reported by me and was hereafter transcribed
9 under my direction into typewriting; that the foregoing
10 is a complete and accurate record of said testimony; and
11 that the witness was given an opportunity to read and
12 correct said deposition and to subscribe the same.

13 Should the signature of the witness not be
14 affixed to the deposition, the witness shall not have
15 availed himself or herself of the opportunity to sign or
16 the signature has been waived.

17 I further certify that I am not of counsel, nor
18 attorney for any of the parties in the foregoing
19 deposition and caption named, nor in any way interested
20 in the outcome of the cause named in said caption.

21
22 DATED: _____, 2008
23

24 LOUISE MARIE SOUSOURES,
25 CSR. NO 3575